IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 922 of 2003

in

SPECIAL CIVIL APPLICATION No 8741 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAGANBHAI RANCHODBHAI PARMAR

Versus

DIST. FAMILY PRIMARY MEDICAL OFFICER & EX. OFFICER

Appearance:

1. LETTERS PATENT APPEAL No. 922 of 2003

MR MAYUR GOHIL FOR MR BS BRAHMBHATT for Appellant No.

MR MANISH PATEL FOR MR HS MUNSHAW for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and

HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 27/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE J.N.BHATT)

A short question which has surfaced under Clause 15 of the Letters Patent Appeal is as to whether the rejection of the Special Civil Application No.8741 of 2003 on 23rd December, 2002 by the learned Single Judge that the prayer of the appellant-original petitioner who was admitted in the employment as a Field Worker in District Panchayat, Nadiad, on the basis of School Leaving Certificate produced by the petitioner in which the date of birth was shown 11-8-1945, cannot be permitted and rejecting the application by giving reasons in this Letters Patent Appeal requires interference to which our spontaneous answer is in the negative.

2. The proposition of law about change of date of birth and the employment record has been very well expounded and settled by catena of judicial pronouncements. It has been clearly propounded that a person who enters into the employment on the basis of birth record (in the present case on the basis of School Leaving Certificate) and enjoying the benefit of early entry in the employment cannot be heard against the recorded birth date entry in the employment at the fag end of the employment with the motive to have additional years in service. This is not a case of mistake on the part of the authority. This is a case of the recorded birth date on the basis of the School Leaving Certificate produced by the appellant-original petitioner seeking employment and having enjoyed it. Therefore, apart from the provisions of Rule 171 of the Bombay Civil Services Rules (BCSR), the factual profile emerging from the record and the reasons stated by the learned Single Judge we will not in any way detain us for further consideration. We are fully satisfied that the impugned judgment of the learned Single Judge is justified requiring no interference. Letters Patent Appeal, therefore, deserves to be dismissed. Therefore, Letters Patent Appeal shall stand dismissed without any order as to costs.

3. It has been submitted on behalf of the appellant that the original petitioner, the appellant herein, has already reached superannuation age and despite that the process of pension papers and resultant pensionary benefits are not given solely on the ground of pendency of the Letters Patent Appeal. Obviously, the authority

cannot otherwise also detain the process of pension papers. Even in a gross case, adhoc pensionary benefit is also introduced by the Central Government. Learned advocate appearing for the respondent, Mr.Manish Patel for Mr.H.S.Munshaw, has assured that pensionary benefit due and payable to the appellant shall be paid as early as possible and preferably within two months.

(J.N.BHATT,J.)

(R.P.DHOLAKIA,J.)

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